BOOKS AND PERIODICALS.

EMPLOYERS' LIABILITY FOR MALPRACTICE IN HOSPITALS FOR EMPLOYEES. — It is a recognized exception to the doctrine of *respondeat superior* that charitable hospitals, private as well as public, are not liable to patients for injuries suffered at the hands of surgeons or nurses selected with due care for hospital service. *Joel* v. *Woman's Hospital*, 35 N. Y. Supp. 37. This freedom from liability has been extended to hospitals maintained by corporations for the treatment of their ill and injured employees. *Railway Co.* v. *Artist*, 60 Fed. Rep. 365. Whether the reasons for the exception satisfactorily explain the extension of it to such hospitals, is discussed in a recent number of the Central Law Journal. *The Non-Liability of Railroad Companies maintaining Hospitals for the Malpractice of Surgeons and the Negligence of Nurses therein*, by Wm. B. Morris, 56 Central L. J. 184 (March 6, 1903). The author holds the reason for the non-liability of a charitable institution to be that the burden of paying damages assessed against it ultimately falls on the public, since the public must care for patients whom the institution can no longer accommodate because its resources have been crippled. This reasoning, he urges, does not support the decisions relating to hospitals maintained by railroads, mining corporations, and the like.

Various theories, most of them unsatisfactory, have been suggested to explain the immunity of charitable corporations. It cannot rest on the fact that the corporation receives nothing in return for its treatment of the patient, for paying as well as non-paying patients are barred from recovery. *Ward* v. *St. Vincent's Hospital*, 50 N. Y. Supp. 466. Nor can it rest on the theory that the resources of a charitable institution are gifts in trust for charitable purposes and are not to be diverted from those purposes, for no distinction is taken between the endowment and the receipts from paying inmates. The true ground seems to be that suggested by the author and above referred to, namely, that there is no occasion to invoke the arbitrary doctrine of *respondeat superior* where the conduct of the *superior* is essentially charitable and the application of the doctrine must be expected to result in the lessening of his charitable efforts.

The author, however, fails to point out any clear distinction between the case of the ordinary charitable institution and that of the railroad hospital. His only implied distinction is that the element of selfishness is found commonly in the latter and rarely in the former. But it would seem that the mere incidental expectation of an indirect benefit is not enough to distinguish a non-charity from a charity. A working rule for all these cases should be based on something tangible, and should be uniform. It is doubtful if a more serviceable test can ever be applied than the one commonly adopted by the courts in both the classes of cases under discussion. If it appears that no direct profit is derived or expected from a hospital, by whomsoever maintained, then it is essentially a charity. It is reasonable to expect that a company would discontinue its hospital rather than assume responsibility for the mistakes therein of surgeons whose work brings the company no profit and is subject to no effective control by the company. But if the company derives an income from the maintenance of its hospitals, then the enterprise is no charity and the doctrine of *respondeat superior* should be applied. *Texas & Pacific Coal Co.* v. *Connaughton*, 20 Tex., Civ. App. 642. The question is certainly more difficult when a hospital is supported by deductions from wages. But even then, inasmuch as the institution is not maintained by the railroad for purposes of profit, it would seem to rank as a charitable, or at least as a co-operative, institution, and the railroad company, therefore, should be entitled to immunity.